IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.621 OF 2002

Ravindra s/o Ramkisan Lodhi
Age:32 Yrs., occu. Agril.
R/o Shindad, Tq. Pachora,
District Jalgaon. = **APPELLANT**
(Orig. Petitioner)

VERSUS

1) Balu Daulat Patil
Age: 30 yrs., occu. Driver,
R/o Shindad, Tq. Pachora,
District Jalgaon.

2) Sahebrao Daulat Patil
age: 35 Yrs., occu. Tractor
Owner and Agril.
R/o Shindad, Tq. Pachora,
Dist. Jalgaon.

3) New India Insurance Co.Ltd.
The Branch Manager,
Jalgaon. = **RESPONDENT/S**
(Orig.Respondents)

Mr. VT Choudhari, Advocate for Appellant;
Respondent Nos.1 & 2 duly served.
Mr. SG Chapalgaonkar, Adv.for Respondent No.3.

CORAM : P.R.BORA, J.
DATE : 6th June,2017.

ORAL JUDGMENT:

1) Heard the learned Counsel appearing for the parties.

2) "Whether a person contacting a second marriage can be held entitled to receive the

compensation on account of the accidental death of his first wife, living along with him ?" is a short question involved in the present appeal.

3) The judgment delivered by Motor Accident Claims Tribunal, Jalgaon (for short, the Tribunal) in MACP No. 297 of 1998 has given rise for filing the present appeal, whereby the claim petition, filed by the present appellant claiming compensation on account of death of his wife in a vehicular accident, has been rejected on the ground that the appellant has contacted a second marriage and hence he cannot be held to be a legal heir of the deceased who is his first wife.

4) It was the case of the appellant that his wife, viz. Shobhabai, suffered the accidental death while travelling in a trailer bearing registration No. MH-19-J-2310, which was attached to the tractor bearing registration No. MH-19/C 2504. The Tribunal though has answered all other issues relating to negligence of the d river of the insured vehicle in occurrence of the alleged

accident, about its ownership and coverage of insurance etc. in favour of the appellant, has ultimately rejected the claim petition on the ground that the appellant failed to prove that he is the legal representative of deceased Shobhabai.

5) Shri Choudhari, learned Counsel appearing for the appellant, submitted that on wholly erroneous ground the Tribunal has dismissed the petition. The learned Counsel taking me through the evidence on record, submitted that what has come on record is the fact that the present appellant got second time married with sister of deceased Shobhabai, viz. Sangita and had children out of the said wedlock. The learned Counsel submitted that nothing has come on record to show that deceased Shobhabai was not the wife of the appellant. The learned Counsel further submitted that nothing has also come on record to show that the present appellant had taken divorce from deceased Shobhabai and no

relationship was in existence between the appellant and deceased Shobhabai on the date of the accident. The learned Counsel, therefore, prayed for setting aside the finding recorded by the Tribunal leading to the dismissal of the petition and consequently to allow the claim petition filed by the appellant.

6) Shri Chapalgaonkar, learned Counsel appearing for the insurance company, fairly conceded that the finding recorded by the Tribunal on Issue No.1 cannot be sustained. The learned Counsel further submitted that since no order was passed against the insurance company, saddling any liability on it, no appeal has been filed on behalf of the insurance company. The learned Counsel sought to canvass that the finding recorded by the Tribunal on Issue No.6 needs to be interfered with since the Tribunal has misconstrued the provision and has failed to appreciate that the deceased was travelling in a trolley, which was attached to the tractor

admittedly meant for the agricultural purposes and breach of policy conditions was therefore quite evident. The learned Counsel submitted that the said aspect also needs to be looked into by this Court while deciding the present appeal.

7) After having considered the submissions advanced by learned Counsel appearing for the parties and on perusal of the impugned judgment and the material on record, I have no hesitation in setting aside the finding recorded by the Tribunal on Issue No.1. It is nobody's case that deceased Shobhabai was not the wife of the present appellant. Even if it is accepted that the appellant contacted second marriage, in absence of any evidence to the effect that the appellant obtained divorce from deceased Shobhabai, it cannot be held that there was no relationship between deceased Shobhabai and the appellant. From the undisputed facts on record, on the date of accident the relationship of husband and wife was quite in existence between

the appellant and deceased Shobhabai. Appellant, therefore, has to be held as the legal heir of deceased Shobhabai. The finding recorded by the Tribunal that the appellant cannot be said to be the legal representative of deceased Shobhabai, is thus apparently incorrect and deserves to be set aside.

8) As noted by me earlier, the other issues in respect of occurrence of the accident and the aspect of negligence are concerned, the Tribunal has answered the said issues in favour of the appellant. The Tribunal However did not determine the amount of compensation in view of the finding recorded by it on Issue No.1. I, therefore, deem it appropriate to remit back the matter to the Tribunal so as to assess the amount of compensation on the basis of evidence placed on record by the parties and pass the award accordingly.

9) In view of the fact that the claim

petition was filed in the year 1998, the Tribunal is directed to determine the amount of compensation and pass the Award expeditiously and preferably within the period of three months. The parties are directed to appear before the Tribunal on **3rd July, 2017.**

10) Though, it was sought to be canvassed by Shri Chapalgaonkar, learned Counsel appearing for the insurance company, that from the material available on record itself the finding recorded by the Tribunal that there is no breach of policy condition can be set aside and the learned Counsel, therefore, prayed for setting aside the said finding and consequently exonerate the insurance company from its liability to indemnify the insured, in absence of any specific challenge raised by the insurance company in that regard, may be for the reason that the petition itself was dismissed and no liability was saddled on the insurance company, I am unable to accept the submission so made.

11) The first appeal stands allowed in the aforesaid terms. Pending Civil Application if any stands disposed of.

(P.R.BORA)
JUDGE

bdv/